

***CHAPTER 367 - SMALL LOAN COMPANY
LICENSING APPLICATION PACKET***
(Licensing Year July 1 through June 30)

Enclosures: Chapter 367 License Application
Applicable Statutes and Regulations

Instructions:

1. The enclosed application must be completed in its entirety. Please note you must include both the business and residence address of the officers and directors of the company. Be sure to sign the application where indicated.
 2. Chapter 367 - Small Loan Company registration fees are pro-rated. You will find a pro-rated fee schedule on the back of your application. Please allow for mail time when calculating your pro-rated fee. Your fee must be submitted with your completed application.
 3. If you would like your license sent to an address other than the company address, please note this on your application.
 4. Please note that under no circumstances will a license be issued to both a Chapter 367 - Small Loan Company and a Section 500 - Small, Small Loan Company (lenders of unsecured loans under five hundred dollars) at the same address. Should your company move to a new location, you must notify our office immediately and surrender your original license for amendment.
 5. If you have any further questions regarding the filing of this application, please call our office at 573-751-3463.
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Instructions: Please complete this form and submit, including licensing fee (see reverse side for pro-rated amount), to the Division of Finance, 301 West High Street, Harry S. Truman State Office Bldg., Room 630, P.O. Box 716, Jefferson City, MO 65102. **PLEASE NOTE: THE LICENSING FEE APPLIES TO EACH LOCATION TRANSACTING BUSINESS.** Should you have any questions, please contact the Consumer Credit Licensing Section at 573-751-3463.

MISSOURI DIVISION OF FINANCE Application for Consumer Credit Loans Small Loan Certificate of Registration For Year of <u>FY200</u> --- (7/1 to 6/30)	OFFICE USE ONLY --	
	367 - _____	Rec# _____
	Check No. _____	Amount: \$ _____
	Date: _____	Initials: _____

Information for Licensed Location:

Company Name: _____

Address: _____

City: _____ **State:** _____ **Zip:** _____

Telephone: _____ **Fax:** _____ **County (MO only):** _____

Hours of Operation:		
License <u>Certificate</u> Mailing Instructions (You <u>must</u> Check one):	<input type="checkbox"/> Mail Directly to Above Licensed Location <input type="checkbox"/> Mail to Home Office <input type="checkbox"/> Mail to Other Address: _____ _____ _____	
Licensing Contact for <u>Renewal</u> Applications:	Name: _____	
	Street Address: _____	
	City/State/Zip: _____	
	Telephone: () Fax: ()	
Contact Person for Office and Consumer Inquiries/Complaints:	Name: _____	
	Street Address: _____	
	City/State/Zip: _____	
	Telephone: () Fax: ()	
Home Office Information (if applicable):	Name: _____	
	Street Address: _____	
	City/State/Zip: _____	
	Telephone: () Fax: ()	
Information Regarding Preparer of Application:	Name: _____	
	Telephone: () Fax: ()	

If applicant is: **Individual**, complete Section I. **Partnership**, complete Section II. **Corporation**, complete Sections II and III.

I. INDIVIDUAL	Name:	Phone Number: ()
	Residence Address:	
	Business Address:	
II. PARTNERSHIP, ASSOCIATION <u>OR</u> CORPORATION	Name:	Phone Number: ()
	Principal Business Address:	
Names, Titles of Partners/Officers	Business Address	Residence Address
III. CORPORATION	Date of Incorporation:	
	Principal Office in Missouri (if applicable):	

PRO-RATED FEE SCHEDULE: The annual registration fee for Section 408.500 registration is \$300.00. This fee shall be pro-rated per month from date business is to begin operations. The fee schedule is as follows:

January	--	\$150.00	April	--	\$75.00	July	--	\$300.00	October	--	\$225.00
February	--	\$125.00	May	--	\$50.00	August	--	\$275.00	November	--	\$200.00
March	--	\$100.00	June	--	\$25.00	September	--	\$250.00	December	--	\$175.00

STATEMENT: The undersigned, first being duly sworn, states that (s)he is a(n) (officer) (principal) (partner) (authorized representative) in the company above named and that facts contained in the foregoing application are true.

(Signature)(Officer/Title, Partner)

CHAPTER 367

PAWNBROKERS AND SMALL LOANS

SMALL LOANS

- 367.100. Definitions.
- 367.110. Certificate of registration required, when.
- 367.120. Certificate of registration - application for.
- 367.130. Bond - amount - conditions - additional bond, when.
- 367.140. Annual registration - fee, amount - certificates, issuance, display.
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- 367.210. Audit report to director of finance, when.
- 367.215. Failure to file audit report, effect of.

CROSS REFERENCES

Interest generally, Chap. 408, RSMo
Taxation of credit institutions, RSMo 148.120 to 148.230
Uniform interest rates, Const. Art. III § 44
Unsecured loans less than five hundred dollars, registration of lenders, when, RSMo 408.500

SMALL LOANS

367.100. Definitions. - As used in sections 367.100 to 367.200:

(1) **"Consumer credit loans"** shall mean loans for the benefit of or use by an individual or individuals:

(a) Secured by a security agreement or any other lien on tangible personal property or by the assignment of wages, salary or other compensation; or

(b) Unsecured and whether with or without comakers, guarantors, endorsers, or sureties;

(2) **"Director"** shall mean the director of the division of finance or such agency or agencies as may exercise the powers and duties now performed by such director;

(3) **"Lender"** shall mean any person engaged in the business of making consumer credit loans. A person who makes an occasional consumer credit loan or who occasionally makes loans but is not regularly engaged in the business of making consumer credit loans shall not be considered a lender subject to sections 367.100 to 367.200;

(4) **"Person"** shall include individuals, partnerships, associations, trusts, corporations, and any other legal entities, excepting those corporations whose powers emanate from the laws of the United States and those which under other law are subject to the supervisory jurisdiction of the director of the division of finance of Missouri, the director of the division of credit unions or of the director of the division of savings and loan supervision of Missouri;

(5) **"Supervised business"** shall mean the business of making consumer credit loans, as herein defined, of money, credit, goods, or things in action.

(L. 1951 p. 262 § 1, A.L. 1965 p 114, A.L. 1977 H.B. 48, A.L. 1978 S.B. 745)
Interest rate on small loans, RSMo 408.100 to 408.210

367.110. Certificate of registration required,

when. - No lender shall engage in the business of making consumer credit loans as herein defined in this state of money, credit, goods or things in action without first having obtained a certificate of registration from the director as provided in sections 367.100 to 367.200.

(L. 1951 p. 262 § 2)

367.120. Certificate of registration - appli-

cation for. - Application for a certificate of registration shall be in writing in the form prescribed by the director. No certificate of registration is required until thirty days after sections 367.100 to 367.200 become effective, during which period such application may be made.

(L. 1951 p. 262 § 3)

367.130. Bond - amount - conditions - addi-

tional bond, when. - The director may require the lender to file with the director a bond in the principal amount of one thousand dollars at the time of filing the application for a certificate of registration hereunder, or at such later time as the director deems necessary for the purposes of sections 367.100 to 367.200. The lender shall be the obligor, and the surety shall be approved by the director. The bond shall run to the state of Missouri for the use of the state or any person or persons who may have a cause of action against the lender-obligor arising out of the supervised business. The condition of the bond shall be that the lender-obligor will conform to and abide by the provisions of sections 367.100 to 367.200 and the laws of the state of Missouri relating to consumer credit loans, and the assignment or sale of wages, salaries, or other compensation, and will pay to the state and to any person any and all moneys that may become due under sections 367.100 to 367.200 or under any transaction which is a part of the supervised business. If in the opinion of the director the bond shall at any time appear to be insecure or exhausted or otherwise doubtful an additional bond in the principal sum of not more than one thousand dollars in form and with surety satisfactory to the director, shall be filed within fifteen days after notice of the requirement thereof be given to the lender by the director.

(L. 1951 p. 262 § 4)

367.140. Annual registration - fee, amount - certificates, issuance, display.

- 1. Every lender shall, at the time of filing application for certificate of registration as provided in section 367.120 hereof, pay the sum of three hundred dollars as an annual registration fee for the period ending the thirtieth day of June next following the date of payment and in full payment of all expenses for investigations, examinations and for the administration of sections 367.100 to 367.200, except as provided in section 367.160, and thereafter a like fee shall be paid on or before June thirtieth of each year; provided, that if a lender is supervised by the commissioner of finance under any other law, the charges for examination and supervision required to be paid under said law shall be in lieu of the annual fee for registration and examination required under this section. The fee shall be made payable to the director of revenue. If the initial registration fee for any certificate of registration is for a period of less than twelve months, the registration fee shall be prorated according to the number of months that said period shall run.

2. Upon receipt of such fee and application for registration, and provided the bond, if required by the director,

has been filed, the director shall issue to the lender a certificate containing the lender's name and address and reciting that such lender is duly and properly registered to conduct the supervised business. The lender shall keep this certificate of registration posted in a conspicuous place at the place of business recited in the registration certificate. Where the lender engages in the supervised business at or from more than one office or place of business, such lender shall obtain a separate certificate of registration for each such office or place of business.

3. Certificates of registration shall not be assignable or transferable except that the lender named in any such certificate may obtain a change of address of the place of business therein set forth. Each certificate of registration shall remain in full force and effect until surrendered, revoked, or suspended as herein provided.

(L. 1951 p. 262 § 5, A.L. 1986 H.B. 1195)

367.150. Annual report - contents. - Every lender shall, on or before April thirtieth of each year, and upon a form prescribed by the director, file with the director a written report under oath containing the following information pertaining to the supervised business conducted by the lender during the preceding calendar year:

(1) The name of the lender, and the address of each office in the state of Missouri, and the principal office if it is outside the state of Missouri;

(2) The names and addresses of all officers and directors of the lender, and where a partnership the names and addresses of all partners, giving their respective interests;

(3) A balance sheet showing the financial condition of the lender as of the end of the lender's previous fiscal year, including a statement of the total assets used and useful in conducting the business, both tangible and intangible. Where any item of assets or liabilities is involved both in the consumer loan business and in additional loan or other business of the lender, the latter shall indicate on the balance sheet the proportion of each item properly attributable to the consumer loan business in accordance with formulae and regulations prescribed by the director. In the event the lender is a corporation, in addition to the statement of assets and liabilities normally included in balance sheets, a detailed statement of the lender's capitalization shall be given, including:

(a) Total of each class of securities authorized and outstanding;

(b) Capital or paid-in surplus;

(c) Earned surplus at beginning of period;

(d) Dividends paid during period;

(e) Earned surplus at end of period;

(4) A profit and loss statement covering operations of the supervised business during the previous fiscal year, including a statement of gross earnings, a detailed statement of expenses and the amount paid or reserved for federal, state and other taxes. Where any item of income or expenses arises in connection with both the consumer loan business and some additional loan or other business of the lender the latter shall indicate on the profit and loss statement the proportion of each item properly attributable to the consumer loan business, in accordance with formulae and regulations prescribed by the director;

(5) The total aggregate number and principal amount of loans made by the lender in the following categories:

(a) \$ 1 - \$ 100

(b) \$ 100 - \$ 200

(c) \$ 200 - \$ 400

(d) \$ 400 - \$ 600

(e) \$ 600 - \$ 1000

(f) \$ 1000 - or higher;

(6) The number of garnishments, attachments and other suits filed and judgments obtained;

(7) The number of security agreements foreclosed and the amount received from such sales and from the resale;

(8) Any other additional and relevant information relating to loans that the director may from time to time prescribe by regulation.

(L. 1951 p. 262 § 6, A.L. 1965 p. 114)

367.160. Examination of lenders - authority of director - lender to pay costs. when.

- The director, his deputies and examiners shall have full power and authority at any time and as often as reasonably necessary to investigate or examine the supervised business, affairs and loans made in the supervised business of any registered lender and of every person, firm, partnership and corporation making loans who the director has reasonable grounds to believe is subject to and violating the provisions of sections 367.100 to 367.200, for the purpose of ascertaining whether or not the lender, or such person, firm, partnership or corporation is complying with the provisions of sections 367.100 to 367.200 and the laws of Missouri relating to consumer credit loans or assignment or sale of wages or salary or other compensation. In connection with any such investigation or examination the director and his representatives shall have free and immediate access to the lender's place or places of business and his or its books and records and shall have the right and power to examine under oath all persons whomsoever whose testimony may be required relative to the affairs and business of the particular lender. Whenever it is necessary to examine the business and loans of a registered lender more than once a year or of any other lender at any time, then the lender shall be chargeable with and be required to pay the necessary cost and expenses thereof, including the actual travel expenses and a per diem of one hundred dollars for each examining official while engaged in travel to and from the place of such examination and during the period required for such examination. Whenever any lender is subject to examination by or required to make reports to municipal officers under city ordinances regulating the supervised business, such examinations or reports shall be in lieu of the examinations and reports required by the provisions of sections 367.100 to 367.200.

(L. 1951 p. 262 § 7, A.L. 1986 H.B. 1195)

367.170. Regulations - authority of director - insurance - premiums deemed not to be charges.

- The director is authorized and empowered to make such general regulations as may be necessary for the enforcement of sections 367.100 to 367.200 and shall issue regulations providing and governing the types and limits of insurance and the issuance of policies which may be sold in connection with consumer credit loans. The cost of any insurance shall not exceed the standard rates and the insurance shall be obtained from an insurance company duly authorized to conduct business in this state and the registrant, or any of its employees, may be licensed as an insurance agent. Insurance premiums shall not be considered as interest, service charges or fees in connection with any loan. Each such regulation shall be consistent with sections 367.100 to 367.200 and shall be referenced to the specific provision of sections 367.100 to 367.200 which is to be enforced by it. Nothing in this section shall alter or amend the statutes of this state relating to insurance or affect the powers of the director of insurance under statutes relating to credit life insurance and credit accident and health insurance.

(L. 1951 p. 262 § 8, A.L. 1984 S.B. 686 § 367.170 subsec. 1)

367.180. Lender to keep records. - Every lender shall keep books and records of the supervised business.

(L. 1951 p. 262 § 9)

367.185. Loan solicitation, disclosures. - 1.

Every nondepository financial institution licensed under sections 367.100 to 367.215 and otherwise defined as a person in section 367.100 shall comply with the provisions of this section.

2. In addition to any disclosures otherwise provided by law, such person soliciting loans using facsimile or negotiable checks shall disclose the following:

"THIS IS A SOLICITATION FOR A LOAN.

READ THE ENCLOSED DISCLOSURES BEFORE SIGNING THIS AGREEMENT."

This notice shall be printed in not less than ten-point bold type and shall appear directly on the face of the check.

3. When such persons make loans secured by real estate as otherwise provided by law, such persons shall include in a printed portion of the contract the following notice:

"WARNING TO BORROWER: DEFAULT IN THE PAYMENT OF THIS LOAN AGREEMENT MAY RESULT IN THE LOSS OF THE PROPERTY SECURING THE LOAN. UNDER FEDERAL LAW YOU MAY HAVE THE RIGHT TO CANCEL THIS AGREEMENT. IF YOU HAVE THIS RIGHT, THE CREDITOR IS REQUIRED TO PROVIDE YOU WITH A SEPARATE WRITTEN NOTICE SPECIFYING THE CIRCUMSTANCES AND TIMES UNDER WHICH YOU CAN EXERCISE THIS RIGHT."

This notice shall be printed in not less than ten-point bold type.

4. When making or negotiating loans, such person shall take into consideration in determining the size and duration of a loan contract the financial ability of borrowers to reasonably repay the loan in the time and manner as specified in the loan contract.

5. Such person shall post in a conspicuous location in each licensed office the maximum rates and fees that such person is currently charging on any loans made.

(L. 1998 S.B. 792)

367.190. Certificates of registration - suspension, revocation, when - hearing - review. - In the event

any lender fails, refuses, or neglects to comply with the provisions of sections 367.100 to 367.200, or of any laws of the state of Missouri relating to consumer credit loans or assignment or sale of wages, or salaries or other compensation, his or its certificate of registration for the place of business at which the violation occurred, may be suspended or revoked by order of the director after a hearing before said director on any order to show cause why such order of suspension or revocation should not be entered specifying the grounds therefor which shall be served on the particular lender at least ten days prior to the hearing. Such action shall not affect any rights or charter powers which any state bank, state trust company or national banking association has by virtue of any other law. Review may be had of any such order made and entered by the director in the manner provided by law.

(L. 1951 p. 262 § 10)

367.200. Violations - penalty. - If any person, firm, partnership or corporation to whom or which sections 367.100 to 367.200 apply, or any officer, agent or representative of such person, firm, partnership or corporation violates any of the provisions of said sections or shall attempt to transact any supervised business whatsoever in the name or on behalf of such person, firm, partnership or corporation, while he or it fails or refuses to comply with provisions of sections 367.100 to 367.200, each such person, firm, partnership, or corporation, agent, officer, or representative shall be deemed guilty of a misdemeanor.

(L. 1951 p. 262 § 11)

367.205. Annual audit by certified public accountant required. - All persons and entities licensed

under the provisions of sections 367.100 to 367.200 shall cause an audit to be made once each year by a certified public accountant firm, of which at least one partner is the holder of a Missouri certified public accountant license. In the event that entities licensed under the provisions of sections 367.100 to 367.200 are affiliated with entities which engage in other than such licensed activities in this state or elsewhere, an audit of the financial statements which consolidate the financial statements of the licensee, made according to generally accepted auditing standards, will be sufficient for the purpose of sections 367.205 to 367.215.

(L. 1972 S.B. 405 § 1)

367.210. Audit report to director of finance.

when. - A copy of the report of the audit required by section 367.205 shall be delivered to the director of finance of the state of Missouri at least thirty days prior to the license renewal date.

(L. 1972 S.B. 405 § 2)

367.215. Failure to file audit report, effect of.

-The director of finance shall not issue a renewal license to any person or entity licensed under the provisions of sections 367.100 to 367.200 unless the audit report is furnished as required by section 367.210.

(L. 1972 S.B. 405 § 3)

CHAPTER 408

LEGAL TENDER AND INTEREST

INTEREST ON SMALL LOANS

- 408.100. Applicability of section - rate of interest.
- 408.105. Precomputed loans, extensions, fee, limitations.
- 408.110. Short title - applicability of sections 408.120 to 408.190.
- 408.120. Interest computed and paid, how.
- 408.130. Borrower to receive statement of contract - contents - receipts for payments.
- 408.140. Additional charges or fees prohibited, exceptions - no finance charges if purchases are paid for within certain time limit, exception.
- 408.145. Fees for credit cards issued in contiguous states.
- 408.150. Lender can not receive excess interest - failure by lender to return excess interest, damages allowed.
- 408.160. False advertising prohibited.
- 408.170. Contracts paid in full before due date - recomputations of interest.
- 408.175. Interest rate when maturity of note or contract accelerated.
- 408.180. Authority of director to verify interest rates charged.
- 408.190. Certain loans exempt from sections 408.120 to 408.180 and 408.200.
- 408.193. Credit cards, no derogatory reports to credit agencies for carrying a zero balance.
- 408.200. Borrower not to be indebted on two or more contracts with same lender, when.
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LOAN DISCRIMINATION

- 408.550. Discrimination prohibited - damages recoverable.

DEFAULTS

- 408.551. Applicability of sections 408.551 to 408.562 - credit transaction defined.
408.552. Enforceability of default provisions.
408.553. Recovery limitation.
408.554. Notice of default, contents, form, delivery.
408.555. Acceleration, repossession and cancellation restricted - required procedures - borrower's right to cure - penalty.
408.556. Actions arising from default, contents of petition - default judgment requires sworn testimony - recovery of unpaid balances.
408.557. Notice required before deficiency action may be commenced - contents, delivery.
408.558. Security interests not to be taken, when.
408.560. Unenforceable provisions in note or credit contract.
408.562. Damages recoverable for violation.

INTEREST ON SMALL LOANS

408.100. Applicability of section - rate of interest. - This section shall apply to all loans which are not made as permitted by other laws of this state except that it shall not apply to loans which are secured by a lien on real estate, nonprocessed farm products, livestock, farm machinery or crops or to loans to corporations. On any loan subject to this section, any person, firm, or corporation may charge, contract for and receive interest on the unpaid principal balance at rates agreed to by the parties.

(L. 1951 p. 875 § 408.031, A.L. 1959 H.B. 320, A.L. 1979 S.B. 305, A.L. 1985 H.B. 358 & 440, A.L. 1998 S.B. 792)

408.105. Precomputed loans, extensions, fee, limitations. - 1. Extensions on precomputed loans made pursuant to section 408.100 shall be calculated on an actuarial basis or as follows and shall not be considered an additional charge or fee within the meaning of section 408.140:

UNIT CHARGE (UC) = $\frac{\text{Total Finance Charge}}{\text{Sum of the Digits of Original Term}}$

EXTENSION FEE = UC Times Number of Full Remaining Installments

2. The following limitations regarding extensions on precomputed loans shall apply:

- (1) No extension may be taken on the first installment;
- (2) No extension fee shall be collected more than one month prior to the due date of the earliest installment being deferred;
- (3) No extension shall be collected for any partial payment; however, two dollars or less shall not be considered a partial payment;
- (4) A minimum extension fee of one dollar will be allowed;
- (5) In the event of * prepayment in full of the note or contract, the extensions shall be counted as months and computed as provided in section 408.170, based on this total, applied to all of the interest contracted for, plus the extension fees collected.

(L. 1985 S.B. 183)

*Word "of" does not appear in original rolls.

408.110. Short title - applicability of sections 408.120 to 408.190. - Sections 408.120 to 408.190 shall apply only to loans made pursuant to section 408.100, and shall be known as the "Consumer Loan Act".

(L. 1951 p. 875 § 408.032, A.L. 1981 S.B. 326, A.L. 1996 H.B. 1432)

408.120. Interest computed and paid, how. - The total interest for payment according to schedule may be added to the principal of the loan, but interest shall not be discounted or deducted from the principal of the loan, or paid or received at the time the loan is made, and shall not be compounded. Loan contracts may be calculated and repaid as follows:

(1) A loan contract may provide for repayment in consecutive monthly installments, but the first installment may be payable at any time within forty-five days from the date of the loan and no installment shall be substantially greater than any other installment. Interest for any fractional portion of a month may be computed for each elapsed day at one-thirtieth of the monthly rate contracted for.

(2) A loan contract may provide for repayment as the parties may agree; however, any such loan contract shall provide for the payment of simple interest on such loans at rates not to exceed those authorized by sections 408.100 and 408.200.

(L. 1951 p. 875 § 408.032(a), A.L. 1981 S.B. 326)

408.130. Borrower to receive statement of contract - contents - receipts for payments. - 1. At the time the loan is made, there shall be delivered to the borrower, or, if there are two or more borrowers, to one of them, a written statement or copy of the loan contract showing in clear and distinct terms:

- (1) The name and address of the lender and of one of the borrowers;
- (2) The date of the loan contract;
- (3) The schedule of installments or description thereof;
- (4) The type of any instrument securing the loan;
- (5) The principal amount of the loan excluding interest;
- (6) The rate or amount of interest as the contract may provide;
- (7) That the borrower may prepay the loan in whole or in part at any time, and in case interest has been added to the principal of the loan;
- (8) That the interest is subject to the refund requirements of section 408.170 if the loan is prepaid in full.

2. A receipt shall be given for the amount of each payment made in currency. Any note paid in full, or a copy thereof, shall be so marked "paid" and returned and any security interest which no longer secures a loan shall be restored, canceled or released.

(L. 1951 p. 875 § 408.032(b), A.L. 1965 p. 114, A.L. 1994 H.B. 963)

408.140. Additional charges or fees prohibited, exceptions - no finance charges if purchases are paid for within certain time limit, exception. - 1. No further or other charge or amount whatsoever shall be directly or indirectly charged, contracted for or received for interest, service charges or other fees as an incident to any such extension of credit except as provided and regulated by sections 367.100 to 367.200, RSMo, and except:

(1) On loans for thirty days or longer which are other than "open end credit" as such term is defined in the federal Consumer Credit Protection Act and regulations thereunder, a fee, not to exceed five percent of the principal amount loaned not to exceed fifty dollars may be charged by the lender; however, no such fee shall be permitted on any extension, refinance, restructure or renewal of any such loan,

unless any investigation is made on the application to extend, refinance, restructure or renew the loan;

(2) The lawful fees actually and necessarily paid out by the lender to any public officer for filing, recording, or releasing in any public office any instrument securing the loan, which fees may be collected when the loan is made or at any time thereafter; however, premiums for insurance in lieu of perfecting a security interest required by the lender may be charged if the premium does not exceed the fees which would otherwise be payable;

(3) If the contract so provides, a charge for late payment on each installment or minimum payment in default for a period of not less than fifteen days in an amount not to exceed five percent of each installment due or the minimum payment due or twenty-five dollars, whichever is less; except that, a minimum charge of ten dollars may be made. If the contract so provides, a charge for late payment on each twenty-five dollars or less installment in default for a period of not less than fifteen days shall not exceed five dollars;

(4) Charges or premiums for insurance written in connection with any loan against loss of or damage to property or against liability arising out of ownership or use of property as provided in sections 367.170, RSMo; however, notwithstanding any other provision of law, with the consent of the borrower, such insurance may cover property all or part of which is pledged as security for the loan, and charges or premiums for insurance providing life, health, accident, or involuntary unemployment coverage;

(5) Charges assessed by any institution for processing a refused instrument plus a handling fee of not more than fifteen dollars;

(6) If the contract or promissory note, signed by the borrower, provides for attorney fees, and if it is necessary to bring suit, such attorney fees may not exceed fifteen percent of the amount due and payable under such contract or promissory note, together with any court costs assessed. The attorney fees shall only be applicable where the contract or promissory note is referred for collection to an attorney, and is not handled by a salaried employee of the holder of the contract.

(7) Provided the debtor agrees in writing, the lender may collect a fee in advance for allowing the debtor to defer up to three monthly loan payments, so long as the fee is no more than the lesser of fifty dollars or ten percent of the loan payments deferred, no extensions are made until the first loan payment is collected and no more than one deferral in a twelve-month period is agreed to and collected on any one loan. This section applies to nonprecomputed loans only and does not affect any other sections.

2. Other provisions of law to the contrary notwithstanding, an open end credit contract under which a credit card is issued by a company, financial institution, savings and loan or other credit issuing company whose credit card operations are located in Missouri may charge an annual fee provided that no finance charge shall be assessed on new purchases other than cash advances if such purchases are paid for within twenty-five days of the date of the periodic statement therefor.

3. Notwithstanding any other provision of law to the contrary, in addition to charges allowed pursuant to section 408.100, an open-end credit contract provided by a company, financial institution, savings and loan or other credit issuing company which is regulated pursuant to this chapter may charge an annual fee not to exceed fifty dollars.

(L. 1951 p. 875 § 408.032(c), A.L. 1979 S.B. 305, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision, S.B. 326, A.L. 1984 S.B. 686, A.L. 1986 H.B. 1207, A.L. 1989 H.B. 386 and H.B. 615 & 563 and S.B. 192, A.L. 1990 H.B. 1630 and S.B. 768, A.L. 1992 S.B. 688 & S.B. 705, A.L. 1994 H.B. 1312, A.L. 1996 S.B. 683, A.L. 1998 S.B. 792)

408.145. Fees for credit cards issued in contiguous states. - 1. To encourage competitive equality, lenders issuing credit cards in this state pursuant to the authority of section 408.100 or 408.200, may in addition to

lawful interest, contract for, charge and collect fees for such credit cards which any lender in any contiguous state is permitted to charge for credit cards issued in such contiguous state by such state's statutes. State-chartered lenders charging such fees in reliance on this subsection shall file a copy of the pertinent statutes of one contiguous state authorizing credit card fees with the director of finance or such lender's principal state regulator. The director of finance or other principal state regulator shall, within thirty days after receipt of the filing, approve or disapprove of such fees on the sole basis of whether the statutes of such contiguous state permit such fees, and without regard to the restrictions placed upon credit cards by subsection 2 of this section. When the lender is chartered by the federal government, or any agency thereunder, or is unregulated, such lender shall file with and be approved by the Missouri attorney general under the same provision as provided a state-chartered lender.

2. **"Credit card"** as used in this section shall mean a credit device defined as such in the federal Consumer Credit Protection Act and regulations thereunder, except:

(1) The term shall be limited to credit devices which permit the holder to purchase goods and service upon presentation to third parties whether or not the credit card also permits the holder to obtain loans of any other type; and

(2) Such credit device shall only provide credit which is not secured by real or personal property.

3. **"Lender"** as used in this section shall mean any category of depository or nondepository creditor. Notwithstanding the provisions of section 408.140, the lender shall declare on each credit card contract whether the credit card fees are governed by section 408.140, or by this section. (L. 1998 S.B. 792 and S.B. 852 & 913)

Effective 1-1-99

408.150. Lender can not receive excess interest - failure by lender to return excess interest, damages allowed. - If any amount in excess of the interest permitted by sections 408.100 to 408.190 is charged or received on any loan except as the result of a bona fide error, the lender shall be barred from recovery of any interest on the contract and shall upon demand return all interest received to the person from* whom received. If such interest is not returned upon written demand, then the person paying the same or his legal representative may recover twice the amount paid together with costs of the suit and reasonable attorney's fees, provided that the action is brought within five years of such written demand.

(L. 1951 p. 875 § 408.032(d), A.L. 1982 H.B. 1341, 1473, 1474 & 1475)

*Word "from" does not appear in original rolls.

408.160. False advertising prohibited. - No person, firm, or corporation shall print, publish, distribute or cause the same to be done in any manner whatsoever, any written or printed statement with regard to interest or charges, terms or conditions for the lending of money which is false or calculated to deceive.

(L. 1951 p. 875 § 408.032(e))

408.170. Contracts paid in full before due date - recomputations of interest. - 1. If a note or loan contract providing for amount of interest, added to the principal of the loan is prepaid in full (by cash, renewal, or refinancing) one month or more before the final installment date, the lender shall either:

(1) Recompute the amount of interest earned to the date of prepayment in full on the basis of the rate of interest originally contracted for computed on the actual unpaid principal balances for the time actually outstanding; or

(2) If the initial term of the contract is sixty-one months or less, give a refund of a portion of the amount of interest originally contracted for which shall be computed as follows: The amount of the refund shall be at least as great a proportion of such amount of interest as the sum of the full monthly balances of the contract scheduled to follow the installment date after the date of prepayment in full bears to the sum of all the monthly balances of the contract, both sums to be determined according to the payment schedule provided by the contract; except that, if prepayment in full occurs during the first installment period, interest shall be recomputed and charged only for the actual number of days elapsed. When the period before the first installment is more or less than one month, the portion of the interest earned for such period shall be determined by counting each day in such period as one-thirtieth of a month and one three hundred and sixtieth of a year.

2. No refund shall be required for any partial prepayment.

3. The word "**refund**" as used herein shall mean a credit or deduction from the amount of interest originally contracted for.

(L. 1951 p. 875 § 408.032(f), A.L. 1986 H.B. 1207)

408.175. Interest rate when maturity of note or contract accelerated. - If the maturity of a note or loan contract providing for an amount of interest added to the principal of the loan is accelerated, the unpaid balance shall be reduced by the refund of that portion of the amount of interest originally contracted for which would be required for prepayment in full on the date of acceleration, and thereafter the note or loan contract shall bear interest at the rate originally contracted for, computed on unpaid balances for the time actually outstanding from the installment date following the date of acceleration until paid.

(L. 1959 H.B. 321)

408.180. Authority of director to verify interest rates charged. - The director of finance shall have the power and duty to verify the correctness of the rate and amount of interest charged or received and the refund of interest made on any loan which is subject to section 408.100.

(L. 1951 p. 875 § 408.032(g))

408.190. Certain loans exempt from sections 408.120 to 408.180, and 408.200. - Sections 408.120 to 408.180 and 408.200 shall not apply to any loan on which the rate or amount of interest charged or received is lawful without regard to the rates permitted in section 408.100.

(L. 1951 p. 875 § 408.032(h), A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1980 H.B. 1195, A.L. 1981 S.B. 5 Revision)

408.193. Credit cards, no derogatory reports to credit agencies for carrying a zero balance. - 1. For the purposes of this section, the term "**credit card**" shall mean a credit device defined as such in the federal Consumer Credit Protection Act.

2. Any entity that issues credit cards in this state, delivers credit cards in this state or causes credit cards to be delivered in this state shall not make any derogatory report to a credit reporting agency on any credit card holder solely because such credit card holder has paid the entire outstanding balance on such credit card by the payment date.

3. Nothing herein shall authorize or prohibit an entity from suspending credit card privileges or recalling the issued credit card for any purpose.

(L. 1998 S.B. 852 & 913 § 1)
Effective 1-1-99

408.200. Borrower not to be indebted on two or more contracts with same lender, when. - No lender shall permit any borrower to be indebted to such lender on two or more contracts at any time for the purpose or with the result of contracting for or receiving more interest on the multiple notes or contracts than would have been permissible on a single note or contract entered into in accordance with section 408.100.

(L. 1951 p. 875 § 408.033, A.L. 1959 H.B. 320, A.L. 1974 2d Ex. Sess. S.B. 1, A.L. 1977 S.B. 317, A.L. 1979 S.B. 305, A.L. 1985 H.B. 358 & 440, A.L. 1998 S.B. 792)

408.210. Assignment of wages or compensation - excess over loan deemed interest. - The payment of four hundred dollars or less in money, credit, goods, or things in action, as consideration for any sale or assignment of, or order for the payment of wages, salary, commissions, or other compensation for services, whether earned or to be earned, shall for the purpose of this chapter and any act regulating loans or punishing usury be deemed a loan secured by such assignment, and the amount by which such assigned compensation exceeds the amount of such consideration actually paid shall for the purposes of this chapter and any act regulating loans or punishing usury be deemed interest or charges upon such loan from the date of such payment to the date such compensation is payable, and such transaction shall be governed by and subject to the provisions of this chapter, provided that nothing in this section contained shall be construed as authorizing the assignment of wages, salaries, commissions, or other compensation for services not earned at the time when such purported sale or assignment thereof is made. In case any transaction defined in this section results in a greater rate or amount of interest or charges than is permitted by law, all contracts taken in connection with such transaction shall be void and the lender shall have no right to collect, receive, or retain any principal, interest or charges.

(L. 1951 p. 875 § 408.034)

LOAN DISCRIMINATION

408.550. Discrimination prohibited - damages recoverable. - 1. No person, upon proper application, shall be denied credit under the provisions of sections 408.015 to 408.562 on the basis of sex, marital status, age, race or religion. Any action which complies with the provisions of the Equal Credit Opportunity Act, Public Law 93-495 (15 USC 1691 et seq.), and rules and regulations promulgated thereto shall be deemed to be in compliance with this section. Any borrower discriminated against on any of these prohibited bases may recover five hundred dollars or actual damages, whichever is greater, court costs and attorney's fees.

2. No person shall be denied credit under the provisions of sections 408.015 to 408.562 because of any exercise of his rights under law.

(L. 1979 S.B. 305)

DEFAULTS

408.551. Applicability of sections 408.551 to 408.562 - credit transaction defined. - Sections 408.551 to 408.562 shall apply to any credit transaction made primarily for personal, family or household purposes pursuant to sections 365.010 to 365.160, RSMo, and sections 408.100 to 408.370. For the purposes of this section, unless the context requires otherwise, "**credit transaction**" shall mean any retail installment transaction as defined by section 365.020, RSMo, or any loan subject to section 408.100 or any second mortgage loan as defined by section 408.231 or any retail time transaction as defined in section 408.250.

(L. 1979 S.B. 305, A.L. 1984 H.B. 1170, A.L. 1998 S.B. 792)

408.552. Enforceability of default provisions.

- An agreement of the parties to a credit transaction concerning default by the borrower is enforceable only to the extent that:

(1) The borrower fails to make a payment as required by agreement; or

(2) The lender's prospect of payment, performance, or ability to realize upon the collateral is significantly impaired; the burden of establishing significant impairment is on the lender.

(L. 1979 S.B. 305)

408.553. Recovery limitation. - Upon default the lender shall be entitled to recover no more than the amount which the borrower would have been required to pay upon prepayment of the obligation on the date of final judgment together with interest thereafter at the simple interest equivalent of the rate provided in the contract.

(L. 1979 S.B. 305)

408.554. Notice of default, contents, form, delivery.

- 1. After a borrower has been in default for ten days for failure to make a required payment and has not voluntarily surrendered possession of the collateral, a lender may give the borrower and all cosigners on the credit transaction the notice described in this section. A lender gives notice to the borrower and cosigners under this section when he delivers the notice to the borrower or cosigner or mails the notice to him at his last known address.

2. Except as provided in subsection 4 of this section, the notice shall be in writing and conspicuously state: The name, address and telephone number of the lender to whom payment is to be made, a brief identification of the credit transaction, the borrower's right to cure the default, and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

(name, address, and telephone number of lender)

(account number, if any)

(brief identification of credit transaction)

(amount) is the AMOUNT NOW DUE

(date) is the LAST DAY FOR PAYMENT

You are late in making your payment(s). If you pay the AMOUNT NOW DUE (above) by the LAST DAY FOR PAYMENT (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law.

3. If the loan transaction is an insurance premium loan, the notice shall conform to the requirements of subsection 2 of this section and a notice in substantially the form specified in that subsection complies with this subsection, except for the following:

(1) In lieu of a brief identification of the loan transaction, the notice shall identify the transaction as an insurance premium loan and each insurance policy or contract that may be canceled;

(2) In lieu of the statement in the form of notice specified in subsection 2 of this section that the lender may exercise his rights under the law, the statement that each policy or contract identified in the notice may be canceled; and

(3) The last paragraph of the form of notice specified in subsection 2 of this section shall be omitted.

4. If a credit transaction is secured, the notice described in this section shall further state the following: "If you voluntarily surrender possession of the following specified

collateral, you could still owe additional money after the money received from the sale of the collateral is deducted from the total amount you owe."

5. In the case of a second default on the same loan made pursuant to section 408.100 or on the same retail time transaction as defined in section 408.250 or in the case of a third default on the same second mortgage loan as defined in section 408.231, the notice described in subsection 2 of this section shall indicate that in the case of further default, the borrower will have no right to cure.

(L. 1979 S.B. 305, A.L. 1992 S.B. 705)

408.555. Acceleration, repossession and cancellation restricted - required procedures - borrower's right to cure - penalty.

- 1. Except as provided in subsection 2 of this section, after a default consisting only of the borrower's failure to make a required payment, a lender, because of that default, may neither accelerate maturity of the unpaid balance nor take possession of or otherwise enforce a security interest until twenty days after a notice of the borrower's right to cure is given both to the borrower and to all cosigners on the credit transaction nor, with respect to an insurance premium loan, give notice of cancellation until thirteen days after a notice of the borrower's right to cure is given; notice shall not be given prior to default. Until expiration of the minimum applicable period after the notice is given, the borrower or cosigner may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the borrower to his rights as though the default had not occurred.

2. This section does not prohibit a borrower from voluntarily surrendering possession of property which is collateral and the lender from thereafter accelerating maturity of the loan and enforcing the note or loan and his security interest in the property at any time after default. If the lender has not already given the notice described in subsection 2 or 3 of section 408.554, he shall upon voluntary surrender of the collateral notify the borrower either personally or by mail at the borrower's last known address that he may owe additional money after the money received from the sale of the collateral is deducted from the total amount owed.

3. No lender is bound by the provisions of subsection 1 of this section if default by the same borrower in connection with the same credit transaction with the same lender has occurred twice notwithstanding the cure of such defaults except as provided in subsection 4 of this section.

4. Default by a borrower on a second mortgage loan may be cured by tendering the current obligation of the borrower at any time prior to the completion of the judicial or extrajudicial proceedings for foreclosure upon such real estate. For the purposes of this section, "**current obligation of the debtor**" means the aggregate of all installments scheduled to be due at the time of the tender, notwithstanding any contractual provision for the acceleration of installment payments. A lender may take no steps to enforce a security interest in real property pursuant to a second mortgage loan until thirty days after notice of the borrower's right to cure is given; notice shall not be given prior to default. Cure restores the borrower's rights under the agreement as though the default had not occurred, and any foreclosure in violation of this section is a class B misdemeanor. This section shall not affect the debtor's right otherwise to redeem such real property under any other provision of law.

(L. 1979 S.B. 305, A.L. 1983 S.B. 70, A.L. 1992 S.B. 705)

408.556. Actions arising from default, contents of petition - default judgment requires sworn testimony - recovery of unpaid balances.

- 1. In any action brought by a lender against a borrower arising from default,

the petition shall allege the facts of the borrower's default, facts sufficient to show compliance with the provisions of sections 400.9-501 to 400.9-507, RSMo, which provisions are hereby deemed applicable to all credit transactions, with respect to any sale or other disposition of collateral for the credit transaction, the amount to which the lender is entitled, and an indication of how that amount was determined.

2. A default judgment may not be entered in the action in favor of the lender unless the petition is verified by the lender, or sworn testimony, by affidavit or otherwise, is adduced showing that the lender is entitled to the relief demanded.

3. If a lender takes possession or voluntarily accepts surrender of goods in which the lender has a purchase money security interest to secure a credit transaction in the principal amount of less than five hundred dollars, the borrower is not liable to the lender for the unpaid balance.

4. Following any disposition of collateral pursuant to the provisions of section 400.9-504, RSMo, the lender shall be entitled to recover from the borrower the deficiency, if any, only if the amount financed in the transaction was more than five hundred dollars and the amount remaining unpaid at the time of default is three hundred dollars or more.

(L. 1979 S.B. 305, A.L. 1983 S.B. 70)

408.557. Notice required before deficiency action may be commenced - contents, delivery.

- 1. When a lender sells or otherwise disposes of collateral in a transaction in which an action for a deficiency may be commenced against the borrower, prior to bringing any such action or upon written request of the borrower, the lender shall give the borrower the notice described in this section. A lender gives notice to the borrower under this section when he delivers the notice to the borrower or mails the notice to him at his last known address.

2. The notice shall be in a writing and conspicuously state:

(1) The name, address and telephone number of the lender to whom payment of any deficiency is to be made;

(2) An identification of the goods sold or otherwise disposed of;

(3) The date of sale or other disposition;

(4) The nature of the disposition if other than a sale, or, if a sale, whether or not the goods were sold at public auction and the name and address of the person who conducted the auction;

(5) The amount due the lender immediately prior to the disposition after deducting the amount of any refund of interest and, if known to the creditor, insurance premiums;

(6) The sale price;

(7) Expenses incurred by the lender permitted to be deducted from the sale price before application to the debt pursuant to sections 400.9-501 to 400.9-507, RSMo, itemized and identified to show the nature of each such expense; and

(8) The remaining deficiency, or surplus, as of the date of sale, computed by subtracting item (7) from item (6) and subtracting the difference so determined, if more than zero, from item (5).

(L. 1979 S.B. 305)

408.558. Security interest not to be taken, when.

- 1. No security interest, other than a purchase money security interest, may be taken or acquired in household furnishings, appliances, or clothing of the borrower or his dependents as security for a loan if the amount financed is less than five hundred dollars.

2. No security interest may be taken or acquired in goods as security for a credit transaction in the principal amount of less than one hundred fifty dollars.

(L. 1979 S.B. 305)

408.560. Unenforceable provisions in note or credit contract. - The following provisions when contained in any note or credit contract or the contract of any guarantor of a credit transaction shall be void and unenforceable:

(1) A power of attorney to confess judgment;

(2) An assignment of wages;

(3) A waiver or limitation of any exemption given by law to the borrower exempting the borrower's property from attachment or execution, except insofar as the waiver or limitation applies to property in which the lender has been granted a security interest to secure the credit transaction;

(4) A security interest in consumer goods which are identified only as a general class of goods, such as "household goods" or "furniture"; and

(5) A waiver of any right of action against the lender or his assignee or other person acting on behalf of the lender in the collection of payments under the contract or in the repossession of goods.

(L. 1979 S.B. 305)

408.562. Damages recoverable for violation. -

In addition to any other civil remedies or penalties provided for by law, any person who suffers any loss of money or property as a result of any act, method or practice in violation of the provisions of sections 408.100 to 408.561 may bring an action in the circuit court of the county in which any of the defendants reside, in which the plaintiff resides, or in which the transaction complained of occurred to recover actual damages. The court may, in its discretion, award punitive damages and may award to the prevailing party in such action attorney's fees, based on the amount of time reasonably expended, and may provide such equitable relief as it deems necessary and proper.

(L. 1979 S.B. 305)